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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,407	04/06/2006	Charles Chang	USP3322A-TPI	3766

7590
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04/16/2009

EXAMINER

VARNUM, RYAN A

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3751

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,407	Applicant(s) CHANG ET AL.	
	Examiner RYAN VARNUM	Art Unit 4118	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it fails to provide an adequate summary of the invention. Correction is required. See MPEP § 608.01(b).
2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Claim Objections

3. Claim 13 is objected to because of the following informalities: Claim 13 recites, “internal threads formed on said neck portion of said container” (Line 5), it appears that this should read “external threads formed on said neck portion of said container” (Page 6, Line 9; Fig.’s 1a-b, and 4b). Appropriate correction is required.
4. Claim 9 is objected to because of the following informalities: Claim 9 recites, “thus by virtue of non-symmetrical” (Line 3), it appears that this should read “thus by virtue of non-symmetry”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 3, 9, 10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. In re Claims 3, 9 and 10, it is unclear to Examiner what the term "non-symmetrical" is intended to encompass. In light of the figures and specification of the present application, it appears that the term “non-symmetrical” is intended to have the same breadth as “non-circumferential”.
8. In re Claim 13, the limitation “said continuous internal threads” lacks antecedent basis in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Byrd et al. (US Patent 5,137,387).

11. In re Claim 1, Byrd discloses an apparatus, comprising: a liquid product applicator (Title); and means 7 (“wiping collar”; Fig. 2; Column 3, Line 57) to wipe liquid product from only a portion of said liquid product applicator, while leaving a greater amount of liquid product on other portions of said liquid product applicator (“removal of excess cosmetic”; Column 2, Lines 3-5).

12. In re Claim 2, Byrd further discloses a liquid product container 1 (“bottle”; Fig. 1; Column 3, Line 27) for storing said liquid product, a cap 2 (Fig. 1; Column 3, line 27) and a stem 6 (“wand”; fig. 1; Column 3, Line 41) from which said liquid product applicator 6’ (“applicator tip”; Fig. 1; Column 4, Line 63) depends, wherein one end 18 (“cup”; Fig. 1; Column 4, Line 64) of said stem is attached to an interior of said cap (Fig. 1; Column 5, Lines 3-6) in such a manner that when said cap is rotated to secure onto said liquid product container, said stem and said liquid product applicator, consequently, remain fixed with respect to the liquid product container (Column 4, Lines 38-41).

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13. In re Claim 3, as best understood by the Examiner, Byrd further discloses said means to wipe 7 (“wiping collar”; Fig. 2; Column 3, Line 57) comprises a wiper 9 (“wiping element”; Fig. 1; Column 4, Lines 20-26), having an orifice 16 (“aperture”; Fig. 2; Column 4, Line 1), operatively attached to a container 1 (“bottle”; Fig. 1) of said liquid product (“cosmetic”; Title), wherein said orifice, in a cross-section taken orthogonal to a major axis of said liquid product applicator and to a major axis of said wiper, is non-symmetrical (“rectangular”; Fig. 2) with respect to said liquid product applicator (Column 4, Lines 2-4).

14. In re Claims 4 and 5, Byrd further discloses a stem 6 (“wand; Fig. 1”) from which said liquid product applicator 6’ (“applicator tip”; Fig. 1) depends, said stem being complementary to shape of said orifice 16 (Column 4, Lines 2-4); wherein a proximal end 18 (“cup”; Fig. 1) of said stem is arranged such that said stem remains rotationally immobile with respect to said container 1 (Fig. 1) when a cap 2 (Fig. 1) is secured onto and from said container (Column 4, Lines 38-44).

15. In re Claim 6, Byrd further discloses at least one flexible doctor blade 9 (“disk of flexible elastomeric material”; Column 4, Lines 20-21) attached to and depending from said orifice 16 (Fig. 1) and arranged such that said at least one doctor blade further wipes said liquid product from said portion of said liquid product applicator (Column 4, Lines 20-26).

16. In re Claims 7 and 8, Byrd further discloses a proximal portion 18 (“cup”; Fig. 1) of said stem 6 (Fig. 1) is cylindrical (“frustoconical”; Column 5, Line 3) and has a horizontal flange 21 (“circumferential ledge”; Fig. 1; Column 5, Lines 8) extending

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therefrom, and said horizontal flange, at a lower surface of said horizontal flange, rotationally engages a horizontal surface 22' ("shelf"; Fig. 1; Column 5, Line 17-19) in said cap 2 (Fig. 1); and a proximal portion 18 ("cup"; Fig. 1) of said stem 6 (Fig. 1) extending into and contacting said interior of said cap 2 (Fig. 1) and supported by an insert member 22' ("shelf"; Fig. 1; Column 5, Line 17-19) fixed disposed in said cap, wherein a flange 21 ("circumferential ledge"; Fig. 1; Column 5, Lines 8) formed around said proximal portion of said stem engaging said insert member, and that the engagement of said proximal portion of said stem with said interior of said cap secures said stem in place (Column 5, Line 17-19).

17. In re Claim 9, as best understood by the Examiner, Byrd further discloses said stem 6 (Fig. 1) is integral with a fitment 18 ("cup" and "integrally molded"; Fig. 1; Column 4, Line 65) at a proximal end thereof, said fitment being rotatably captured in said cap 2 (Fig. 1), and thus by virtue of non-symmetry, said stem passing through said complementarily shaped orifice 16 (Column 4, Lines 2-4) in said wiper 7 (Fig. 2), said liquid product applicator remains fixed with respect to said container even as said cap is rotated as it is secured onto or off of said container (Column 4, Lines 38-44).

18. In re Claim 10, as best understood by the Examiner, Byrd discloses a method comprising the steps of: providing a container 1 ("bottle"; Fig. 1) of liquid product ("cosmetic"; Title); providing a liquid applicator 6/6' ("wand" and "applicator tip"; Fig. 1) that can be disposed in said container of liquid product, in contact with said liquid product (Column 4, Lines 59-62); providing a wiper 7 ("wiping collar"; Fig.'s 1-2) operatively connected to said container of liquid product (Fig. 1), said wiper having an

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orifice 16 ("aperture"; Fig. 2) which, in a cross-section taken orthogonal to a major axis of said liquid product applicator and to a major axis of said wiper, is non-symmetrical with respect to said liquid product applicator (Column 4, Lines 2-4); loading said liquid product applicator with said liquid product in said container (Column 4, Lines 59-62); and wiping off said liquid product from only a portion of said liquid applicator by said orifice while passing said liquid product applicator through said orifice so that said wiped portion of said liquid applicator is able to be used to comb out said liquid product (Column 4, Lines 20-26).

19. In re Claim 11, Byrd further discloses a step of providing a stem 6 ("wand"; Fig. 1) from which said liquid product applicator 6' ("applicator tip"; Fig. 1) depends as complementary to the shape of said orifice (Column 4, Lines 2-4), wherein said stem has a proximal end 18 ("cup"; Fig. 1) of said stem arranged such that said stem remains rotationally immobile with respect to said container when a cap is secured onto and from said container (Column 4, Lines 38-44).

20. In re Claim 12, Byrd further discloses a dispenser for storing and applying liquid product, comprising in combination: a container 1 ("bottle"; Fig. 1) having a neck portion 4 (Fig. 1); a closure cap 2 (Fig. 1) adapted to be mounted on said neck portion of said container to selectively form a seal therewith (Column 3, Lines 27-32); an elongate applicator device 6/6' ("wand" and "applicator tip"; Fig. 1) frictionally and turnably carried by the interior of said closure cap (Column 4, Lines 45-49), said elongate applicator device having a body portion 6 ("wand"; Fig. 1) and a distal end portion 6' ("applicator tip"; Fig. 1) receivable in an interior of said container for contact with liquid product

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(Column 4, Lines 59-62); and cooperable, activatable keying means 6/16 ("wand" and "aperture"; Fig.'s 1 and 2) on said neck portion of said container and said elongate applicator device, for selectively prevent turning movement of said elongate applicator device with respect to said container (Column 4, Lines 2-4 and 38-49); said cooperable keying means being rendered active as said elongate applicator device and said closure cap are being installed to said neck portion of said container (Column 4, Lines 38-44); said keying means being rendered inactive as said elongate applicator device and said closure cap are being withdrawn from said neck portion of said container (Column 4, Lines 45-49); and whereby, said elongate applicator device becomes restrained against turning movement with respect to said container as said distal end portion of said elongate applicator device is inserted into said neck portion of said container (Column 4, Lines 38-44).

21. In re Claim 13, Byrd further discloses said closure cap 2 (Fig. 1) has formed thereon continuous internal threads 3b (Fig. 1); and said neck portion of said container has formed thereon cooperable continuous threads 3a (Fig. 1), engagable with said continuous internal threads of said closure cap (Column 3, Lines 27-32), wherein said keying means is activated prior to any engagement of said continuous external threads formed on said neck portion of said container and said continuous internal threads formed on said closure cap when said closure cap is assembled to said container (it being understood that the applicator and applicator tip 6/6' will engage the wiping collar aperture 16 prior the mating threads of the cap and neck 3a/b engaging one another).

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22. In re Claim 14, Byrd further discloses said keying means 6/16 comprises a non-circular cross sectional portion of said elongate applicator device (“rectangular”; Fig. 1a; Column 4, Lines 2-4); and said means defining a cooperable hole 16 (“aperture”; Fig. 1) in said neck portion 4 (fig. 1) of said container 1 (Fig. 1); and said elongate applicator device fitting into said hole in solely a fixed registration therewith (Column 4, Lines 2-4).

23. In re Claim 15, Byrd further discloses said elongate applicator 6/6’ (“wand” and “applicator”; Fig. 1) device has a brush at a distal end thereof (Column 3, Lines 33-35); and said keying means comprises means 6/16 (“wand” and “aperture”; Fig.’s 1 and 2) defining a hole 16 (“aperture”; Fig. 2) in said neck portion 4 (Fig. 1) of said container1 (Fig. 1); and said hole of said neck portion of said container having a configuration which complements the cross-sectional configuration of said brush (Column 4, Lines 2-4).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. V./
Examiner, Art Unit 4118

/Huyen Le/
Primary Examiner, Art Unit 3751